

Remarks**Claim Rejections - 35 U.S.C. 112**

The Examiner has indicated that the range of 3/16" to 3" which is found in claim 3, 13, 18 and 28, does not appear to be supported in the disclosure. Kindly note that claim 26 does not recite the limitation 3/16" to 3".

Claims 3, 13, 18 and 28 have been amended to read 1/4" to 3" rather than the previous 3/16" to 3".

Support for these claim dimensions are found in the originally submitted specification page 8, lines 1 through 2 where it reads:

"Fore finger thickness: the thickness (roughly diameter) of a fore finger at its largest point. Normally this ranges between 1/2" and 1 1/2"."

Further on page 11, line 2 through 5 the specification reads as follows:

"In practise the angle theta is normally chosen to be 45 ° and the transition section length 53 is then selected to vary off set distance between one half of the thickness 90 to 3 times the thickness 90 of a fore finger 42."

We have defined the thickness of a fore finger to range between 1/2" and a 1 1/2", therefore 1/2 of the thickness to 3 times the thickness would be the range 1/4" to 3" as defined within the specification.

$$3 \times \frac{1}{2} = 1 \frac{1}{2}$$

The Examiner of course is aware that the applicant can define any term as he desires, provided that there is consistency throughout the specification. As well the applicant can be his own lexicographer and can define any terms to have any particular meaning. In this present specification on page 8, lines 1 and 2 as outlined above, the applicant has defined a fore finger thickness to range between $\frac{1}{2}$ " and $1\frac{1}{2}$ ". Furthermore, the specification on page 11, indicates that the off set distance preferably ranges between one half the thickness of a fore finger to 3 times the thickness of a fore finger. Therefore, this lends support to the range $\frac{1}{4}$ " to 3" as claimed in claims 3, 13, 18 and 28.

Furthermore, the thickness of the finger is well defined through ring sizes, wherein US ring size 0000 has a diameter of .39" and ring size 26 $\frac{1}{4}$ has a diameter of 1.298". Although there is a lower minimum ring size, namely size 0000 defined in the ring making industry, there is no upper maximum finger size defined in the industry. Therefore, our fore finger thickness which we have defined as ranging between $\frac{1}{2}$ " and $1\frac{1}{2}$ " is totally reasonable and definite.

35 U.S.C. 102 Objections

The Examiner has indicated that claims 1 to 4, 6 through 19 and 25 to 29 are rejected under 35 U.S.C. 102 (b) as being clearly anticipated by Ernest et al, US Patent 4,598,437 patented July 8, 1986. This prior art is directed at a modular oral hygiene system or a dental apparatus having a detachable head and a handle on to which the detachable head can be inserted. The specification describes how the handle should be held in column four (4) on lines 23 through 27, where reads as follows:

The top and bottom surfaces 22 and 24 of connecting portion 16 are indented to form thumb and finger rest respectively for the users hand. Such indentations are shown in more detail in Figures 1(d) and 1(e), wherein Figure 1(d) shows the bottom view and 1(e) the top view.

The Examiner will note that top and bottom surfaces 22 and 24 as depicted in the Figures indicates that the thumb is held on top surface 22 and the finger rests on bottom surface 24, unlike in our patent where the finger rests along brush edge 64 which is a side portion of the handle rather than a bottom face as defined in US Patent 4,598,437. In other words, the Ernest Patent teaches holding the brush in a completely different manner than we describe in our specification and claim.

Furthermore, in column 4 of US Patent 4,598,437, lines 63 through 65, the Inventor indicates the reason for the shape of the handle which is:

In addition, the handle shape is designed to easily reach the inter proximal areas of the mouth and to provide proper finger and thumb positions for easily controlled oral hygiene use.

In other words, the bend in the handle is to reach into the lower cavities or the upper cavities of the mouth and to keep the hand out of these areas. Should the user attempt to hold the modular oral hygiene handle as indicated in the present application, the fore finger would get into the way of the use of this oral hygiene apparatus in that the brush would no longer be able to reach the inter proximal areas of the mouth because the forefinger would be in the mouth. We enclose Figure "A" to illustrate how the Ernest handle is held. Therefore, this cited prior art teaches away from the combination put forward by the Examiner and is not properly applied prior art in this case, as per W.L. Gore & Associates Inc. v. Garlock Inc., 721 F.2d 1540, 1550 (Federal Circuit 1983).

what
comb?

Furthermore, in Re Oetiker, 977 F.2d 1443, 1447 (Federal Circuit 1992, stands for the proposition that combined references must be from analogous sources. Furthermore, both a suggestion of the modification and the expectation of a success must come from the prior art and not from the applicants disclosure (no hind sight reconstruction) this proposition is found in Re O'farrell, 853 F.2d 894, 903-04 (Federal Circuit 1988). There is nothing in US

Patent 4,598,437 that would suggest that this handle could be used as a paint brush nor would a person skilled in the art, look to the art in dental hygiene in coming up with a new design.

Finally, Ernest does not disclose a similar function namely painting, nor does it disclose holding or gripping the handle in the same manner as discussed above and nor does it disclose the same geometry namely, it does not include a brush edge for placing a forefinger there along. One could not possibly grip the handle disclosed in 4,598,437 as we teach in this application.

The Examiner has also included US Patent 2,691,552 Bauman et al, Handle Assembly which apparently is a handle for a pot. Again the purpose for the curvature there is totally unrelated to the teachings in the present patent application in that the bent portion of the handle is prevent the hand from touching the very hot pot and scalding the user. In fact when attempting to grip the handle in 2,691,552 in the manner in which we teach in this application, one would burn the forefinger.

Bauman does not disclose a head section oriented along a brush plane, nor does it disclose a brush edge.

Our claimed invention discloses at least one functional and structural difference from the prior art and therefore contains patentable subject matter.

Please find enclosed Figures A & B indicating how the Bauman handle and the Ernest handle would be held according to their disclosure and as well how typically a pot handle is gripped.

We look forward to receiving your favourable reply.

Respectfully submitted,


Mark Koch

(44,448)

MAK:pf

F:\WP\MARK\PAT\300P4US.OF1

VERSION WITH MARKINGS TO SHOW CHANGES**In The Claims**

Kindly rewrite the following claims:

Claim 3 has been amended as follows:

3. (Twice amended) The ergonomic paint brush handle claimed in claim 2 wherein said transition section is dimensioned such that the off set distance falls within the range $3/16"$ $1/4"$ (inches) to 3"(inches).

Claim 13 has been amended as follows:

13. (Twice amended) The ergonomic paint brush handle claimed in claim 12 wherein said handle section being dimensioned to have a thickness falling within the range $3/16"$ $1/4"$ (inches) to 3"(inches).

Claim 18 has been amended as follows:

18. (Twice amended) The paint brush claimed in claim 17 wherein said transition section is dimensioned such that the off set distance falls within the range $3/16"$ $1/4"$ (inches) to 3"(inches).

Claim 28 has been amended as follows:

28. (Twice amended) The ergonomic paint brush handle claimed in claim 25 wherein said handle section oriented substantially along a handle axis, said handle axis and said brush plane being substantially parallel to each other and disposed at an offset distance and wherein said transition section is dimensioned such that the off set distance falls within the range $3/16"$ $1/4"$ (inches) to 3"(inches).

F:\WPMARK\PAT\300P4US.OF1

FIG. A

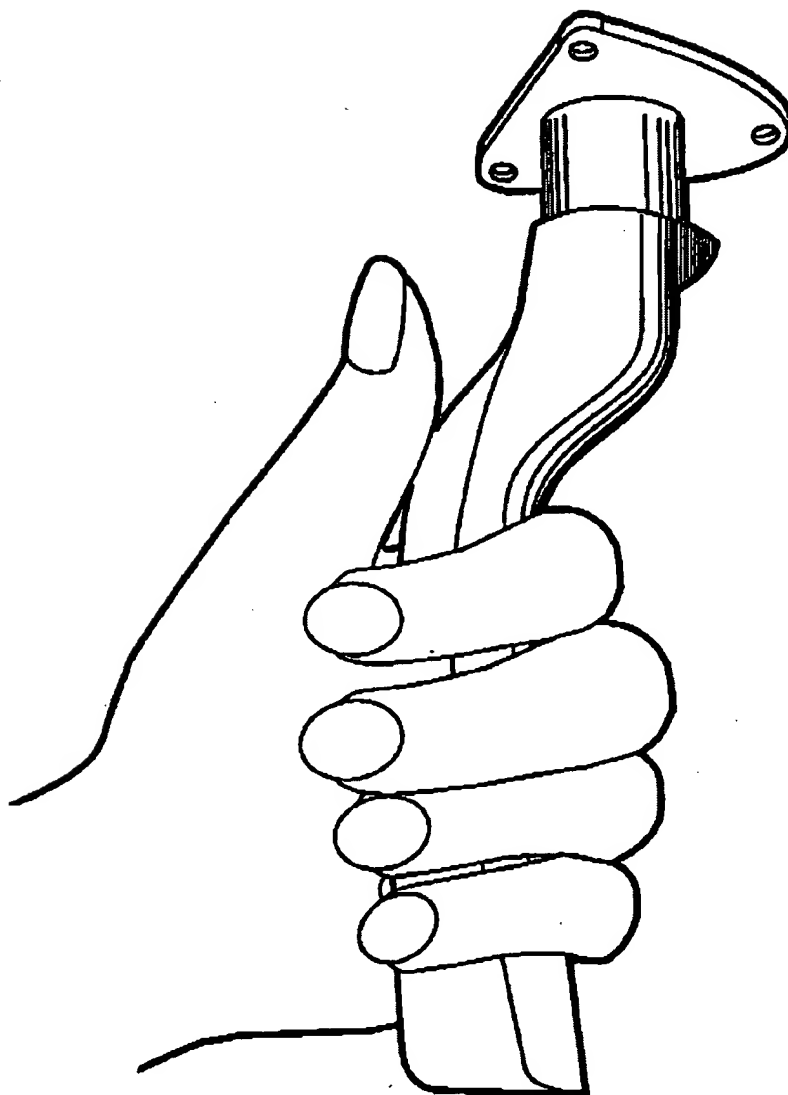


FIG. B

